



**Request for City Council Committee Action  
From the Office of the City Attorney**

**Date:** September 12, 2003

**To:** Public Safety and Regulatory Services Committee

**Subject:** Overview of existing state laws available to deal with illegal conduct in bathrooms.

**Recommendation:** Receive and file.

**Previous Directives:** Staff Direction from August 27, 2003 Public Safety and Regulatory Services Committee meeting to prepare a brief overview of existing state laws available to deal with illegal conduct in bathrooms.

**Prepared or Submitted by:** Susan L. Trammell, Assistant City Attorney  
Phone: x3230

**Approved by:** \_\_\_\_\_  
Jay M. Heffern, City Attorney

**Presenters in Committee:** Susan Trammell

**Financial Impact** (Check those that apply)

☒ No financial impact - or - Action is within current department budget.

(If checked, go directly to Background/Supporting Information)

**Background/Supporting Information Attached:**

If M.C.O. § 385.120 is repealed, a number of other statutes and ordinance sections would continue to be available for dealing with illegal conduct in a bathroom. The two main statutes applicable in this area are M.S. §§ 609.746 ("Interference with privacy") and 617.23 ("Indecent exposure").

Minnesota Statute § 609.746, Subd. 1, states in relevant part:

(c) A person is guilty of a misdemeanor who:

(1) surreptitiously gazes, stares, or peeps in the window or other aperture of a sleeping room in a hotel, as defined in section 327.70, subdivision 3, a tanning booth, or other place where a reasonable person would have an expectation of privacy and has exposed or is likely to expose their intimate parts, as defined in section 609.341, subdivision 5, or the clothing covering the immediate area of the intimate parts; and

(2) does so with intent to intrude upon or interfere with the privacy of the occupant.

(d) A person is guilty of a misdemeanor who:

(1) surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or other aperture of a sleeping room in a hotel, as defined in section 327.70, subdivision 3, a tanning booth, or other place where a reasonable person would have an expectation of privacy

and has exposed or is likely to expose their intimate parts, as defined in section 609.341, subdivision 5, or the clothing covering the immediate area of the intimate parts; and

(2) does so with intent to intrude upon or interfere with the privacy of the occupant.

Unlike the current city ordinance, the Interference with privacy statute does not cover the entry of the restroom itself. Anyone can enter the restroom but if encountered and evidence is obtained that their purpose is illegal then they could be charged. The elements of a criminal charge under M.S. § 609.746 are surreptitiously gazing, staring, or peeping; an aperture (which has been broadly defined by prior caselaw); and the intent to interfere with privacy.

The Indecent exposure statute makes it a misdemeanor to:

- (1) willfully and lewdly exposes the person's body, or the private parts thereof;
- (2) procures another to expose private parts; or
- (3) engages in any open or gross lewdness or lascivious behavior, or any public indecency other than behavior specified in this subdivision.

M.S. § 617.23, Subd. 1. The crime becomes a gross misdemeanor if the perpetrator has a prior conviction for indecent exposure or if the act occurs in the presence of a minor under the age of 16. The crime becomes a felony if the perpetrator has a prior gross misdemeanor conviction for indecent exposure or if the restricts the freedom of movement of a person in perpetrator's presence while committing the indecent exposure, lewd or lascivious behavior. The indecent exposure statute would cover the "flasher" or "exposer" situations as well as those situations where two or more persons are engaging in some type of sexual conduct that exposes a private body part of one of them.

Similarly, Minnesota Statute, § 609.72, ("Disorderly conduct"), could be using in situations where a person is engaging in obscene conduct " knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others . . ."

The public nuisance statute, M.S. § 609.74, would be used if the facts presented a scenario in which the prosecutor could show that the property owner permitted conduct in the bathroom(s) which would unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public. This situation is not likely to present itself very often but theoretically could occur if, for example, the property owner knows that the bathrooms are being used for prostitution and other persons have been offended, but the property owner took no action to stop the illicit conduct.

Two other statutes mentioned during the August 27, 2003, Public Safety and Regulatory Services Committee meeting, M.S. § 609.749, ("Harassment and stalking"), and M.S. § 609.748, ("Harassment restraining orders") are not statutes that would normally be used by prosecutors because of illicit conduct in a bathroom. Minnesota Statute, § 609.749 involves ongoing conduct on the part of the perpetrator towards a victim. The fact that an act occurred in a bathroom would only be incidental. Minnesota Statute § 609.748 permits a victim of harassment or stalking to seek a court order that orders the perpetrator to stay away from the victim.

The removal of our ordinance (and actually the previously proposed amendment) would prevent a transgendered person from being charged under the current ordinance for being in the restroom of (arguably) the opposite sex/gender. Theoretically, the person could still be charged under either Minneapolis City Ordinance, § 385.380 (trespass) or Minnesota Statute § 609.605 (trespass) upon demand to leave and subsequent refusal to leave. The property owner would have the right to demand leaving as Minnesota Statute, § 363.02 Subd. 4, exempts restrooms, locker rooms, and other similar places from the Minnesota Human Rights Act provisions relating to sex discrimination.

If a law is desired that would permit transgendered to go into whichever bathroom desired, an ordinance that affirmatively states that a transgendered person has the right to use any bathroom would be required. The use of bathrooms designated by sex is likely be considered a matter of statewide concern and the City is likely pre-empted from legislating otherwise. (See M.S. 363.02, Subd 4).